



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do NOT use for expedited rule making

Agency: Department of Ecology AO# 08-07

Subject of possible rule making: The Department of Ecology is proposing to update the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and certain portions of the Sediment Management Standards (Chapter 173-204 WAC). These rules govern the cleanup of contaminated sites in Washington. Issues being considered by Ecology include:

- Revisions to establish clear policies and align MTCA and SMS requirements for sediments.
- Updating cleanup standards to reflect new scientific information and recent changes to state and federal regulations. Issues include, but are not limited to: policies and methods to address the vapor intrusion pathway, fish consumption rates for high exposure groups, cleanup levels for lead-contaminated soils and revisions to Method A cleanup levels.
- Revising the rule to address implementation concerns identified since the 2001 MTCA rule amendment. Issues include, but are not limited to: clarifying and streamlining procedures for establishing cleanup standards and selecting cleanup actions; and adding procedures for issuing property-specific opinions under Ecology's Voluntary Cleanup Program.
- Revising the rule to incorporate new statutory requirements enacted since the 2001 MTCA rule amendments, including: the Uniform Environmental Covenants Act (passed in 2007 as SB 5421).

More detail on potential rulemaking issues is available on the Ecology website described below.

Statutes authorizing the agency to adopt rules on this subject:

The Model Toxics Control Act, Chapter 70.105D RCW

Reasons why rules on this subject may be needed and what they might accomplish: According to the Model Toxics Control Act statute, Chapter 70.105D RCW, Ecology must publish and periodically update minimum cleanup standards. The cleanup regulation specifying these standards, Chapter 173-340 WAC, must be reviewed and, as appropriate, updated at least once every five years. Significant changes were made to the rule in 2001 and more targeted amendments added in 2007. Since these amendments, changes have emerged in the body of scientific information used to set cleanup standards. Ecology believes it is appropriate to consider updates so that cleanup decisions continue to be based on the best available science. In addition, certain parts of the regulation need updating to reflect new state and federal laws. Ecology is using this opportunity to consider whether the 2001 amendments in practice have worked as envisioned when promulgated. If not, then Ecology will consider options for clarifying or revising those provisions.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

Establishing state cleanup standards is a unique responsibility assigned to the Department of Ecology in Chapter 70.105D RCW. The U.S. Environmental Protection Agency oversees cleanup actions conducted under the federal Superfund program and will be consulted during this rulemaking process. The Agency for Toxics Substances and Disease Registry and the Washington Department of Health are responsible for evaluating human health hazards at contaminated sites and will be consulted during the rulemaking process. Tribal nations have lands or usual and accustomed fishing areas on or adjacent to cleanup sites and will be consulted during the rulemaking process.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
☐ Pilot rule making
☐ Agency study
☒ Other (describe)

This rulemaking process will result in an amendment to an existing rule. Ecology plans to provide several options for interested people and organizations to participate in the rulemaking process, including informal information sessions about the issues and options being considered. Once Ecology formally proposes rule amendments, people will have an opportunity to comment on the proposed amendments. At least two public hearings will be conducted. Additionally, the proposed amendments will be posted on the Ecology web site and provided to interested persons.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication: Please see attachment.

DATE
February 10, 2009

NAME (TYPE OR PRINT)
Jim Pendowski

SIGNATURE

TITLE
Program Manager

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STATE OF WASHINGTON
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